

SERVICE DATE – SEPTEMBER 8, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32659 (Sub-No. 2)

CALDWELL RAILROAD COMMISSION—EXEMPTION FROM 49 U.S.C. SUBTITLE IV

Digest:¹ The Board grants a request to partially revoke a 49 U.S.C. Subtitle IV exemption previously granted to Caldwell County Economic Development Commission.

Decided: September 3, 2015

On June 11, 2015, the Caldwell Railroad Commission (Caldwell) filed a petition seeking partial revocation of the Subtitle IV exemption its predecessor received in 1995, to permit Caldwell to file a notice of exemption under 49 C.F.R. § 1152.50 and ultimately railbank a segment of rail line pursuant to 16 U.S.C. § 1247(d). The relevant line is a 3.91-mile rail segment extending between milepost 108.79 and milepost 112.7 in Caldwell County, N.C. (the Line). For the reasons discussed below, we will grant the petition.

BACKGROUND

The Line is part of a 22.1-mile rail line known as the HG Line, which extends from milepost HG-90.6 at Hickory, N.C., to milepost HG-112.7 at Valmead, N.C., in Caldwell, Burke, and Catawba Counties, N.C. The Interstate Commerce Commission (ICC) granted a petition by Caldwell's predecessor, the Caldwell County Economic Development Commission (CCEDC), seeking an exemption from all obligations under 49 U.S.C. Subtitle IV in connection with CCEDC's purchase of the HG Line from Norfolk Southern Railway Company in 1995.² Upon acquiring the HG Line, CCEDC leased it to the Caldwell County Railroad Company, which operated over the HG Line until 2007. See Caldwell Cty. R.R.—Discontinuance of Serv. Exemption—in Caldwell Cty., N.C., AB 999X (STB served July 9, 2007).

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Caldwell Cty. Econ. Dev. Comm'n—Exemption from 49 U.S.C. Subtitle IV, FD 32659 (ICC served Aug. 3, 1995). The ICC's decision provided that the blanket exemption granted was subject to the condition that CCEDC (1) notify the agency in advance of any proposed abandonment or discontinuance of service on the Line; (2) submit any environmental or historic data that might be required for an environmental review; and (3) comply with any conditions that might be required prior to consummation of the abandonment or discontinuance.

In 2014, Caldwell filed a petition to revoke its Subtitle IV exemption, which the Board denied “without prejudice to its filing, in [that] docket, a new petition to revoke that provides its reasoning as to why the [rail transportation policy] factors warrant revocation.”³ Subsequently, Caldwell filed the instant petition, arguing that the rail transportation policy (RTP) of 49 U.S.C. § 10101 warrants partial revocation of the blanket exemption to allow railbanking and thereby preserve the right-of-way at issue for potential future rail use.⁴

DISCUSSION AND CONCLUSIONS

As discussed in the Board’s November 2014 decision, we have discretion to revoke an exemption pursuant to 49 U.S.C. § 10502(d),⁵ in whole or in part, if the Board finds that regulation is necessary to carry out the RTP of 49 U.S.C. § 10101. The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns.

In addressing the RTP and the need for partial revocation of the blanket exemption in this case, Caldwell relies on its desire to railbank the Line pursuant to 16 U.S.C. § 1247(d). Caldwell states that if it were to abandon the Line pursuant to the Subtitle IV exemption its predecessor received in 1995, it could do so by providing notice to the Board, together with environmental and historic data; in that case, however, railbanking under 16 U.S.C. § 1247(d) would not be available, and future rail use would be hindered. To preserve the Line for future rail use through railbanking, Caldwell states that it intends to initiate an abandonment proceeding pursuant to 49 C.F.R. § 1152.50, and, accordingly, requests partial revocation of its Subtitle IV exemption over the relevant track in order to do so. As part of an abandonment proceeding prospective trail sponsors would have an opportunity to file a Notice of Interim Trail Use in accordance with 16 U.S.C. § 1247(d). As a result, according to Caldwell, granting partial revocation furthers the RTP by allowing preservation of the railroad right-of-way for future railroad use, thus ensuring the continuation of a sound rail transportation system, 49 U.S.C. § 10101(4), and reducing industry entry and exit barriers, § 10101(7).

Caldwell indicates that it has identified a trail sponsor—Caldwell County Pathways—with whom it intends to pursue a railbanking agreement. On August 17, 2015, Caldwell also submitted a letter from the National Park Service, expressing its support of Caldwell’s petition and stating its intention to incorporate the Line into the Overmountain Victory Historic Trail if the Line is railbanked.

³ Caldwell R.R. Comm’n—Exemption from 49 U.S.C. Subtitle IV, FD 32659 (Sub-No.1), slip op. at 2 (STB served Nov. 26, 2014).

⁴ In the interim, Caldwell filed a verified notice of exemption under 49 C.F.R. § 1152.50 to abandon the Line, which the Board dismissed as moot because the 1995 blanket exemption made abandonment authority unnecessary. Caldwell R.R. Comm’n—Aban. Exemption—in Caldwell Cty., N.C., AB 1112X, slip op. at 2 (STB served May 22, 2015).

⁵ Caldwell R.R. Comm’n—Exemption from 49 U.S.C. Subtitle IV, FD 32659 (Sub-No.1), slip op. at 1-2 (STB served Nov. 26, 2014).

We find that revoking the exemption to allow Caldwell to pursue abandonment authority—and, thus, the possibility of railbanking—would preserve the rail corridor for potential future use if a railbanking agreement is reached and would reduce barriers to entry in furtherance of the RTP. Accordingly, we will grant Caldwell’s petition for partial revocation of its 49 U.S.C. Subtitle IV exemption over the Line.

It is ordered:

1. The petition for partial revocation of the exemption is granted.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.